

In re) Fair Hearing No. 16,863
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Appeal of)

The petitioner appeals the Administrative Review Decision by the Office of Child Support (OCS) that OCS is not liable to the petitioner for alleged overpayments of child support he made between August 1997 and August 2000.

The parties do not appear to dispute the underlying factual basis of the petitioner's complaint. In August 1997 the petitioner was ordered by the Family Court to pay a certain amount of child support. The amount was based in part on the earnings of the custodial parent from her employment in Vermont as she had reported it to OCS in November 1996.

The petitioner alleges that in August 1997 the custodial parent moved to and began receiving wages from a job in New York. Although it appears she was required by law to do so, the custodial parent did not report these earnings to OCS.

The petitioner alleges that in September 1998 he filed a request with OCS for information regarding the custodial

parent's earnings. OCS informed the petitioner that it had no new information regarding the custodial parent's earnings. It appears that in September 1999 OCS did receive information that the custodial parent was working in New York and passed this information along to the petitioner.

In February 2000 the petitioner filed a motion to modify his support obligation in Family Court. On August 28, 2000 the Family Court issued an order modifying the amount of the petitioner's child support retroactive to May 2000. The petitioner did not appeal this order.

Instead, the petitioner filed a grievance against OCS claiming that the agency should pay him the difference in child support he allegedly should have been paying between August 1997 and August 2000 had OCS obtained accurate and timely information regarding the custodial parent's earnings. OCS denied the petitioner's request based on the petitioner's failure to establish a statutory obligation on the part of OCS to have pursued information regarding the custodial parent's income. In response to the petitioner's appeal of this decision to the Human Services Board, OCS further argues that it is beyond the Board's jurisdiction to award damages against the agency for any alleged violations of law and procedures.

The Vermont Supreme Court, in an unpublished opinion, has held that the Human Services Board does not have the statutory power to award damages. Scherer v. DSW, Docket No. 94-206, March 24, 1995. See also, In re Buttolph, 147 Vt. 641 (1987). In cases specifically involving OCS, the Board, citing Scherer, has held that even if a petitioner may have a legitimate monetary claim based on OCS breaching its legal duties "the Board does not have the power to award. . .civil damages". Fair Hearing Nos. 13,294 and 16,043.

Because the only relief requested by the petitioner in this matter is beyond the Board's statutory authority to grant, the petitioner's appeal must be dismissed; and the Board need not address the other factual and legal bases of the petitioner's appeal. However, this does not necessarily mean that the petitioner's underlying claims have merit. It is doubtful that OCS's obligation to maintain a registry of information regarding child support cases renders the agency liable whenever a custodial parent fails to report changes in income. See 33 V.S.A. § 4103. Moreover, the petitioner has already pursued his claim for retroactive relief against the custodial parent in Family Court. Unfortunately, the result there was not to his satisfaction. He did, however, have the opportunity to appeal that decision, and apparently failed to

do so. Under these circumstances it is highly unlikely that any forum would hold OCS liable for its alleged failure to have pursued the custodial parent to provide timely and accurate information regarding her income.

ORDER

The petitioner's appeal is dismissed.

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